

§ 130.5

22 CFR Ch. I (4–1–15 Edition)

§ 130.5 Fee or commission.

(a) *Fee or commission* means, except as provided in paragraph (b) of this section, any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:

(1) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with an applicant, a supplier or a vendor; and

(2) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization.

(b) The term fee or commission does not include:

(1) A political contribution or a payment excluded by § 130.6 from the definition of political contribution;

(2) A normal salary (excluding contingent compensation) established at an annual rate and paid to a regular employee of an applicant, supplier or vendor;

(3) General advertising or promotional expenses not directed to any particular sale or purchaser; or

(4) Payments made, or offered or agreed to be made, solely for the purchase by an applicant, supplier or vendor of specific goods or technical, operational or advisory services, which payments are not disproportionate in amount with the value of the specific goods or services actually furnished.

[58 FR 39323, July 22, 1993, as amended at 71 FR 20554, Apr. 21, 2006]

§ 130.6 Political contribution.

Political contribution means any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:

(a) To or for the benefit of, or at the direction of, any foreign candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise des-

ignated as an employee or officer thereof; and

(b) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.

§ 130.7 Supplier.

Supplier means any person who enters into a contract with the Department of Defense for the sale of defense articles or defense services valued in an amount of \$500,000 or more under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

§ 130.8 Vendor.

(a) *Vendor* means any distributor or manufacturer who, directly or indirectly, furnishes to an applicant or supplier defense articles valued in an amount of \$500,000 or more which are end-items or major components as defined in § 120.45 of this subchapter. It also means any person who, directly or indirectly, furnishes to an applicant or supplier defense articles or services valued in an amount of \$500,000 or more when such articles or services are to be delivered (or incorporated in defense articles or defense services to be delivered) to or for the use of the armed forces of a foreign country or international organization under:

(1) A sale requiring a license or approval from the Directorate of Defense Trade Controls under this subchapter; or

(2) A sale pursuant to a contract with the Department of Defense under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

(b) [Reserved]

[58 FR 39323, July 22, 1993, as amended at 71 FR 20554, Apr. 21, 2006; 79 FR 61236, Oct. 10, 2014]

§ 130.9 Obligation to furnish information to the Directorate of Defense Trade Controls.

(a)(1) Each applicant must inform the Directorate of Defense Trade Controls

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as to whether the applicant or its vendors have paid, or offered or agreed to pay, in respect of any sale for which a license or approval is requested:

(i) Political contributions in an aggregate amount of \$5,000 or more, or

(ii) Fees or commissions in an aggregate amount of \$100,000 or more. If so, applicant must furnish to the Directorate of Defense Trade Controls the information specified in §130.10. The furnishing of such information or an explanation satisfactory to the Director of the Office of Defense Trade Controls Licensing as to why all the information cannot be furnished at that time is a condition precedent to the granting of the relevant license or approval.

(2) The requirements of this paragraph do not apply in the case of an application with respect to a sale for which all the information specified in §130.10 which is required by this section to be reported shall already have been furnished.

(b) Each supplier must inform the Directorate of Defense Trade Controls as to whether the supplier or its vendors have paid, or offered or agreed to pay, in respect of any sale:

(1) Political contributions in an aggregate amount of \$5,000 or more, or

(2) Fees or commissions in an aggregate amount of \$100,000 or more. If so, the supplier must furnish to the Directorate of Defense Trade Controls the information specified in §130.10. The information required to be furnished pursuant to this paragraph must be so furnished no later than 30 days after the contract award to such supplier, or such earlier date as may be specified by the Department of Defense. For purposes of this paragraph, a contract award includes a purchase order, exercise of an option, or other procurement action requiring a supplier to furnish defense articles or defense services to the Department of Defense for the purposes of §22 of the Arms Export Control Act (22 U.S.C. 2762).

(c) In determining whether an applicant or its vendors, or a supplier or its vendors, as the case may be, have paid, or offered or agreed to pay, political contributions in an aggregate amount of \$5,000 or more in respect of any sale so as to require a report under this sec-

tion, there must be included in the computation of such aggregate amount any political contributions in respect of the sale which are paid by or on behalf of, or at the direction of, any person to whom the applicant, supplier or vendor has paid, or offered or agreed to pay, a fee or commission in respect of the sale. Any such political contributions are deemed for purposes of this part to be political contributions by the applicant, supplier or vendor who paid or offered or agreed to pay the fee or commission.

(d) Any applicant or supplier which has informed the Directorate of Defense Trade Controls under this section that neither it nor its vendors have paid, or offered or agreed to pay, political contributions or fees or commissions in an aggregate amount requiring the information specified in §130.10 to be furnished, must subsequently furnish such information within 30 days after learning that it or its vendors had paid, or offered or agreed to pay, political contributions or fees or commissions in respect of a sale in an aggregate amount which, if known to applicant or supplier at the time of its previous communication with the Directorate of Defense Trade Controls, would have required the furnishing of information under §130.10 at that time. Any report furnished under this paragraph must, in addition to the information specified in §130.10, include a detailed statement of the reasons why applicant or supplier did not furnish the information at the time specified in paragraph (a) or paragraph (b) of this section, as applicable.

[58 FR 39323, July 22, 1993, as amended at 71 FR 20554, Apr. 21, 2006; 79 FR 8089, Feb. 11, 2014]

§ 130.10 Information to be furnished by applicant or supplier to the Directorate of Defense Trade Controls.

(a) Every person required under §130.9 to furnish information specified in this section in respect to any sale must furnish to the Directorate of Defense Trade Controls:

(1) The total contract price of the sale to the foreign purchaser;

(2) The name, nationality, address and principal place of business of the